

Request for Reconsideration:

Applicants are canceling original claims 41-53, without prejudice to the subject matter claimed thereby. Applicants respectfully request that the Examiner reconsider the above-captioned patent application in view of the foregoing amendments and the following remarks.

Remarks:

1. Objections and Rejections:

Claims 1-5, 7-11, 14-16, and 18-22 stand rejected under 35 U.S.C. § 102(b), as allegedly being anticipated by U.S. Patent No. 4,539,898 to Bishop et al. ("Bishop"), and claims 23, 29-32, and 36-40 stand rejected under 35 U.S.C. § 102(b), as allegedly being anticipated by U.S. Patent No. 5,586,486 to Nitschke et al. ("Nitschke"). Claims 41 and 42 stand rejected under 35 U.S.C. § 102(b), as allegedly being anticipated by U.S. Patent No. 6,354,192 to Tateyama. Moreover, claim 6 stands rejected under 35 U.S.C. § 103(a), as allegedly being rendered obvious by Bishop in view of U.S. Patent No. 5,910,206 to McNamara, and claims 12 and 13 stand rejected under 35 U.S.C. § 103(a), as allegedly being rendered obvious by Bishop in view of U.S. Patent No. 6,427,580 to Benedictus et al. ("Benedictus"). In addition, claim 17 stands rejected under 35 U.S.C. § 103(a), as allegedly being rendered obvious by Bishop in view of U.S. Patent No. 5,776,530 to Davis et al. ("Davis"), and claims 24-28 and 33 stand rejected under 35 U.S.C. § 103(a), as allegedly being rendered obvious by Nitschke in view of Tateyama, and claims 34 and 35 stand rejected under 35 U.S.C. § 103(a), as allegedly being rendered obvious by Nitschke in view of Benedictus. Claims 43-53 stand rejected under 35 U.S.C. § 103(a), as allegedly being rendered obvious by Tateyama in view of Nitschke.

Applicants have canceled claims 41-53, without prejudice to the subject matter claimed thereby. Therefore, the rejection of claims 41-53 is rendered moot.

2. 35 U.S.C. § 102(b)

Claims 1-5, 7-11, 14-16, and 18-22 stand rejected as allegedly being anticipated by Bishop, claims 23, 29-32, and 36-40 stand rejected as allegedly being anticipated by Nitschke, and claims 41 and 42 stand rejected as allegedly being anticipated by Tateyama.

a. Independent Claim 1

Applicants independent claim 1 describes that the controller deactivates the means for heating when the temperature of the vessel wall is greater than or equal to a predetermined temperature and/or when the difference between the temperature of the vessel wall and the temperature the cooking medium (or air within the cooking medium) is greater than or equal to a predetermined temperature difference.

In contrast to Applicants' claimed invention as set forth in independent claim 1, Bishop merely describes that a heat sensor 94 is positioned in a vat 82 such that heat sensor 94 is covered with a cooking oil 96; a temperature probe 160 is used to monitor the temperature of vat 82; and when the temperature of vat 82 drops to a predetermined amount below a value set on a temperature setting means 162 a switch means will close **to apply power to** a heater unit 156. See, e.g., Bishop, Column 8, Lines 59-63. As such, Bishop does not disclose or suggest **deactivating** the means for heating when at least one of the predetermined conditions from independent claim 1 is satisfied.

The Office Action asserts that "the operation of the controller is not structurally limiting. The operational steps are intended use and the one definitive structural limitation is that of a controller. Bishop discloses all of the structural limitations of the claim." Office Action, Page 7, Lines 4-7. Applicants respectfully disagree with the Office Action's assertions.

Specifically, "a functional limitation is an attempt to define something by what it does, rather than by what it is. There is nothing inherently wrong with defining some part of an invention in functional terms. Functional language does not, in and of itself, render a claim improper. A functional limitation is often used in association with an element, ingredient, or step

of a process to define a particular capability or purpose that is served by the recited element, ingredient, or step.” MPEP 2173.05(g) (emphasis added).

In the above-captioned patent application, the limitation of independent claim 1 that the controller deactivates the means for heating when the temperature of the vessel wall is greater than or equal to a predetermined temperature and/or when the difference between the temperature of the vessel wall and the temperature the cooking medium (or air within the cooking medium) is greater than or equal to a predetermined temperature difference is a functional limitation, and as such, the Office Action must show that Bishop discloses this limitation. For at least the reasons set forth above, Applicants respectfully submit that Bishop does not disclose this limitation. Therefore, Applicants respectfully request that the Examiner withdraw the anticipation rejection of independent claim 1.

b. Independent Claim 23

Applicants independent claim 23 describes a method which comprises the steps of determining the temperature of the cooking medium or the temperature of air within the cooking vessel, determining the temperature of the vessel wall, and deactivating the means for heating when the temperature of the vessel wall is greater than or equal to a predetermined temperature and/or when the difference between the temperature of the vessel wall and the temperature the cooking medium (or air within the cooking medium) is greater than or equal to a predetermined temperature difference. Thus, in Applicants’ claimed invention as set forth in independent claim 23, the temperature of the vessel wall is determined.

The Office Action asserts that Nitschke describes an operation of a fryer in which a first temperature sensor 236 determines a temperature of the cooking medium, and a second

temperature sensor 238 which determines a temperature of the vessel wall. Applicants respectfully disagree with the Examiner's assertions.

For example, Nitschke states:

One embodiment for detecting oil level, shown in FIG. 22, includes a first temperature sensor 236 and a second temperature sensor 238 mounted within the oil reservoir 35 of the frying vessel 36 and connected as inputs to the controller 28. The first temperature sensor 236 and second temperature sensor 238 are commercially available thermistors. The second temperature sensor 238 is preferably mounted on the inside of the frying vessel 36 at a level that is about equal to, or just below, the desired oil level. The first temperature sensor 236 is also mounted within the cooking vessel 36 at a relatively deeper location within the reservoir. When the cooking oil is at the normal level, each of the temperature sensors will indicate approximately the same temperature, the temperature of the oil. If the oil level falls below the level of the second temperature sensor 238, it will begin to register a significantly lower temperature. Thus, by periodically monitoring each of these temperature sensors, the control can determine when the oil level within the frying vessel 36 has fallen below a predetermined acceptable level.

Nitschke, Column 4, Lines 54-67; and Column 5, Lines 1-7 (emphasis added). Because the temperatures sensed by temperature sensors 236 and 238 are the same when the level of the cooking oil is above temperature sensor 238, and because the temperature sensed by temperature sensor 238 decreases when the level of the cooking oil falls below temperature sensor 238, it is clear that temperature sensor 236 determines the temperature of the cooking oil, and temperature sensor 238 detects the temperature of the cooking oil or the temperature of air within the cooking vessel, depending on the level of the cooking oil. Nevertheless, neither temperature sensor 236 or temperature sensor 238 determines the temperature of the wall of the cooking vessel. For example, if temperature sensor 238 were detecting the temperature of the wall of the cooking vessel, the temperature sensed by temperature sensor 238 would increase as the level of the

cooking oil fell. Therefore, Applicants respectfully request that the Examiner withdraw the anticipation rejection of independent claim 1.

c. Claims 2-22 and 24-40

Claims 2-22 and 24-40 depend from independent claims 1 and 23, respectively. Therefore, Applicants respectfully request that the Examiner also withdraw the rejections of claims 2-22 and 24-40.

Conclusion:

Applicants submit that the above-captioned patent application, as amended, now is in condition for allowance, and such disposition is earnestly solicited. If the Examiner believes that the prosecution of this application may be furthered by discussing the application, in person or by telephone, with Applicants' representative, we would welcome the opportunity to do so. Applicants believe that no fees are due as a result of this responsive amendment. Nevertheless, in the event of any variance between the fees determined by Applicants and the fees determined by the U.S. Patent and Trademark Office, please charge or credit any such variance to the undersigned's Deposit Account No. 02-0375.

Respectfully submitted,

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